

**DEPARTMENT OF STATE REVENUE
LETTERS OF FINDINGS NUMBERS:
98-0225; 98-0226; 98-0227
Corporate Income Tax
Penalty
For 1993, 1994, & 1995**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Corporate Income Tax—Consolidated Filing

Authority: IC § 6-3-4-14(b); 45 IAC 1-1-163; IC § 6-8.1-5-1(b); 45 IAC 15-5-3(8)

Taxpayers protest the disallowance of the consolidated filings.

II. Penalty-Negligence

Authority: IC § 6-8.1-10-2; 45 IAC 15-11-2

Taxpayers protest the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer A is the parent corporation of two subsidiaries, taxpayer B and taxpayer C. The parent was a wholesale distributor of hydraulic and electrical parts prior to filing Chapter 11 bankruptcy in 1992. Taxpayer B distributed light fixtures and taxpayer C manufactured industrial parts for hydraulic assemblies. Further facts will be added as required.

I. Corporate Income Tax—Consolidated filing

DISCUSSION

Taxpayers protest the proposed assessment of Indiana corporate income tax based on the audit's determination that a consolidated filing including all three entities should be disallowed. The Department has attempted, since the receipt of the protests on these three taxpayers in 1998, to determine the basis of taxpayers' protests of the disallowance of the consolidated filings. A

Departmental Hearing officer scheduled numerous hearings with the taxpayers' representative who stated he needed extra time to obtain documents. Scheduled hearings were postponed until the representative could obtain those documents. The documents were received in the Legal Division of the Indiana Department of Revenue on September 5, 2003 and September 8, 2003, by FAX. There was no supporting brief accompanying the documents. A review of the documents indicates that there is no information relevant to the issues protested.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Taxpayers' representative has not made the required showing, based on the documents the Hearing Officer has received. It should be noted that the Hearing Officer sent copies of the Audit Summaries for all three taxpayers to the representative on June 2, 2003. The Summaries clearly identify the issues in the Audit, with the proper citations to Indiana Statutes and Regulations. The documents the representative sent all relate to the bankruptcy, a matter of federal, not state, law. Moreover, the documents do not pertain to IC § 6-3-4-14(b)'s requirement that entities filing consolidated returns must have adjusted gross income "derived from sources within the state of Indiana." The documents do not pertain to 45 IAC 1-1-163's requirement that to file a consolidated return, corporations must be "incorporated or qualified to do business in Indiana." The parent is not an Indiana corporation. The parent included one of the subsidiaries in its returns for 1993 and 1994, but then filed a consolidated return in 1995. The election of a consolidated filing must be on the corporation's initial return. The parent did not do that. Taxpayers' representative argued that the consolidated filing was pursuant to an order from the bankruptcy court, but no such order has been made part of the files, nor has one been produced.

FINDING

Taxpayers' protests concerning the disallowance of the consolidated filings are denied.

II. Penalty

Penalty assessments depend on a number of factors outlined in the statute and regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayers have provided no evidence to support abatement of the negligence penalty.

FINDING

Taxpayers' requests for the abatement of the 10% negligence penalty are denied.

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